

**United States Department of Labor
Employees' Compensation Appeals Board**

G.G., Appellant

and

**DEPARTMENT OF THE AIR FORCE, ROBINS
AIR FORCE BASE, Warren Robins, GA,
Employer**

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**Docket No. 12-159
Issued: May 24, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 5, 2011 appellant filed a timely appeal from a June 6, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for a prerecoupment hearing. Because more than 180 days has elapsed between the last merit decision of July 19, 2010 and the filing of this appeal on October 5, 2011, the Board lacks jurisdiction to review the merits of appellant's claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board only has jurisdiction over the nonmerit issue.²

¹ 5 U.S.C. § 8101 *et seq.*

² For final adverse decisions issued prior to November 19, 2008, a claimant had up to one year to appeal to the Board. *See* 20 C.F.R. § 501.3(d)(2). For final OWCP decisions issued on and after November 19, 2008, a claimant has 180 days to file an appeal with the Board. *See* 20 C.F.R. § 501.3(e).

ISSUE

The issue is whether OWCP properly denied appellant's request for a prerecoupment hearing under 5 U.S.C. § 8124.

FACTUAL HISTORY

On March 3, 2010 OWCP notified appellant that it had made a preliminary finding that he was overpaid compensation in the amount of \$6,196.11 for the period September 1, 2005 through February 13, 2010. It explained that the Federal Employees' Retirement System offset deduction was not applied to appellant's benefits as it should have been, and that the receipt of FECA benefits and federal retirement benefits concurrently constituted a prohibited dual benefit under 5 U.S.C. § 8116(d)(2). Detailed calculations were provided by OWCP, which explained how the overpayment was calculated. Appellant was found "without fault" in the creation of the overpayment because he did not know that OWCP had not properly deducted his retirement benefits from his FECA benefits.

Appellant requested a prerecoupment hearing on March 11, 2010. A telephonic hearing was scheduled on June 17, 2010. He failed to appear for the hearing. OWCP instead conducted a review of the written record.

In a July 19, 2010 decision, OWCP finalized its finding that appellant received an overpayment of compensation in the amount of \$6,196.11 for the period September 1, 2005 through February 13, 2010. It found appellant to be without fault, but also found that he did not qualify for waiver as he had not provided proper financial documentation to support his request for waiver. OWCP further found that because it did not have the necessary financial information to develop an equitable repayment plan, it was to collect the overpayment in its entirety.

On April 15, 2011 appellant requested a second prerecoupment hearing.

By decision dated June 6, 2011, OWCP denied appellant's request for a hearing as he had a previous written hearing (a review of the written record) on the overpayment issue and it had finalized the overpayment decision.

LEGAL PRECEDENT

OWCP regulations on the recovery of overpayments provide that before collecting the overpayment, it must provide the claimant with written notice of the fact and amount of the overpayment, the finding of fault, the right to submit evidence challenging the fact, amount or finding of fault and the right to request waiver of the overpayment.³ The regulations further provide that a claimant may request a prerecoupment hearing with respect to an overpayment.⁴ However, once the overpayment decision has been finalized the only right to review of a final

³ 20 C.F.R. § 10.431.

⁴ *Id.* at § 10.432.

overpayment decision is to the Board.⁵ The hearing provisions of 5 U.S.C. § 8124(b) do not apply to a final overpayment decision.⁶

ANALYSIS

OWCP notified appellant of its preliminary determination that he received an overpayment of compensation in a letter dated March 3, 2010. By letter dated March 11, 2010, appellant requested a prerecoupment hearing.

A telephonic hearing was scheduled on June 17, 2010, and appellant received notification of the hearing 30 days in advance of the hearing. However, appellant failed to appear.

In the July 19, 2010 decision, OWCP found that appellant had abandoned his request for a prerecoupment hearing and issued a final decision affirming the preliminary overpayment finding. Appellant requested a second prerecoupment hearing on April 15, 2011, citing hardship as the reason for this request.

The Board finds that OWCP properly determined that appellant was not entitled to a second hearing under section 8123 as a matter of right.

OWCP regulations and Board case law are clear that the only right to review of a final overpayment decision is an appeal to the Board.⁷ The hearing provisions of section 8124(b) (5 U.S.C. § 8124(b)) do not apply to final overpayment decisions. The Branch of Hearings and Review has no discretion to grant a hearing after an overpayment decision has been finalized. Accordingly, the Board finds that OWCP properly denied appellant's request for a second hearing, after he abandoned his first request and his overpayment was finalized.

On appeal appellant argues that his health and financial circumstances surrounding the overpayment should be taken into consideration regarding the underlying overpayment decision. The Board, however, has no jurisdiction over the merits of the overpayment decision as appellant did not timely request the overpayment decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for hearing.

⁵ *Id.* at § 10.440(b).

⁶ *Id.*; see also *Philip G. Feland*, 48 ECAB 485 (1997); *R.H.*, Docket No. 11-1790 (issued April 2, 2012).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board